



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,162	10/22/2003	Marie D. Radatti	CSOFT-0029	5978

45190 7590 05/04/2007  
HARDING, EARLEY, FOLLMER & FRAILEY  
86 THE COMMONS AT VALLEY FORGE  
1288 VALLEY FORGE ROAD, P. O. BOX 750  
VALLEY FORGE, PA 19482-0750

EXAMINER
----------

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
----------	--------------

1761

MAIL DATE	DELIVERY MODE
-----------	---------------

05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/691,162

Applicant(s)

RADATTI ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6,8-17 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,8-17 and 21,30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8-17 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aurio (2006/0099324) taken with Tye (5,308,636) for reasons of record.

Applicant argues that the references do not show the admixture of applicants' claims. This is disagreed with. The claims call for a food product containing part a or b or c. Paragraph 0085 discloses combining a viscous soluble fiber with a viscosity lowering protein in water. The water may be a boiling aqueous medium. It is the examiners understanding that boiling usually occurs at 100C. Although boiling water is not Aurio's preferred treatment, it is one of his selected treatments. Applicant argues that Aurio does not disclose the claimed admixture. This is disagreed with. At paragraph 0022, the viscous soluble fiber is disclosed as including konjac gum. At paragraph 0024, konjac glucomannan is described as being another name for konjac gum and konjac mannan. At paragraph 0033, the viscosity lowering protein is defined as including muscle proteins

from fish and animals. The fact that Aurio does not provide an example of these two ingredients mixed in boiling water does not alone overcome the rejection.

Applicant argues that Aurio does not disclose the preparation of a dough. But Aurio would have to prepare a dough in order to manufacture the baked good contemplated in paragraph 0068. The fact that "dough" is not shown in the examples does not alone constitute unobviousness.

Applicant argues that there is no disclosure in Aurio to introducing gas bubbles into the mixture. But it is well known in the art that mixing often introduces air into foods. Applicant argues features from his specification in order to provide a distinction with Tye. But the rejection is based upon the specific features of the claims.

Applicant refers to binding agents that are not a part of claim 22.

Claims 6, 8-17 and 22-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 22 if applicant is claiming one food product containing features a, b and c or if the food products are selected from the

group consisting of a, b and c. An amendment to the claims clarifying this issue would overcome the rejection.

Claim 17 contains the recitation "father" and examiner believes that – further- should replace "father".

No difference is seen between claim 23 and claim 24. Cancellation of one claim or the other would overcome the rejection.

In claim 28, it is unclear what is included by the recitation –a major amount-. An amendment to the claims clarifying this issue would overcome the rejection.

Claims 23, 24 and 26 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for soluble fiber, does not reasonably provide enablement for insoluble fiber. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. Examiner cannot find basis for the inclusion of insoluble fiber in the specification, as originally filed.

Claims 28-30 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way

as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner cannot find basis for the subject matter of newly added claims 28-30.

Claims 6, 8-15, 17, 22, 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636).

Tye discloses a surimi analogue containing konjac and surimi in example 9 and a konjac/starch system, which is formed to create a gel that does not contain animal protein in example 1. The ingredients are mixed, stuffed in a casing and cooked at 85-90C in a steam bath. Konjac is described as a glucomannan at column 2, lines 38-51. Tye appears to meet all of the requirements of claim 22, parts a and c. The different cooking temperature in step a is a process limitation, carrying no weight in the product claim. The claims appear to differ from Tye in the recitation of a binding agent or glue but starch is well known in the art to act as a glue. The gas bubbles introduced in claim 22 would have been the obvious result of the mixing process of Tye. Pressurization of the dough would have been the obvious result of the stuffing of the sausages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Carolyn Paden*  
CAROLYN PADEN 5-2-07  
PRIMARY EXAMINER 1761